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EXTENT OF PROTECTION OF PENSION INTERESTS

AlabamaAlabama Const. Art. I, Sec. 22. (2007)

Sec. 22. Ex post facto laws; impairment of obligations of contracts; irrevocable or exclusive grants of special privileges or immunities.

That no ex post facto law, nor any law, impairing the obligations of contracts, or making any irrevocable or exclusive grants of special privileges or immunities, shall be passed by the legislature; and every grant or franchise, privilege, or immunity shall forever remain subject to revocation, alteration, or amendment.

Snow v. Abernathy, 331 So.2d 626 (Ala. 1976) (**contractual relation impaired**): Prior to his death, the decedent was a municipal employee. After his death, the widow filed for return of his contributions to the state retirement system with accumulated interest and also filed for the surviving spouse benefit provided in Ala. Code tit. 55, § 460(6)(c). In their amended complaint, the heirs-at-law sought a declaration that § 460 was unconstitutional if applied to provide for the return of the decedent's contributions to the widow rather than his estate, which was designated as the beneficiary prior to the 1967 amendment to § 460. In its subsequent judgment, the trial court found § 460 was unconstitutional because it impaired the contractual obligation owed the estate as the designated beneficiary of the decedent's retirement benefits. On appeal, the Alabama Supreme Court affirmed the judgment to find the widow was eligible for the \$5,000 death benefit and the decedent's estate was eligible to receive all other contributions and accumulated interest thereon. The court held that the relationship between an employee who contributed to the statutory retirement fund and the retirement system was contractual in nature. “**His rights vested thereby** and cannot be abrogated by legislation although **legislation to improve the system** is constitutionally permissible.” *Id.* at 631.

AlaskaAlaska Const. art. I, § 15 (2007)

Section 15. Prohibited State Action

No bill of attainder or ex post facto law shall be passed. No law impairing the obligation of contracts, and no law making any irrevocable grant of special privileges or immunities shall be passed. No conviction shall work corruption of blood or forfeiture of estate.

Section 7. Retirement Systems

Membership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship. Accrued benefits of these systems shall not be diminished or impaired.

Municipality of Anchorage v. Jack Gallion et al., 944 P.2d 436, 442 (1997) (**vested rights impaired**): The city claimed that its decision to reduce benefits for the Anchorage Police and Fire Retirement System (APFRS) did not violate the Alaska Constitution because it had not diminished or impaired the benefits, as they had not yet accrued. The APFRS claimed that reduction of their benefit scheme violated the state constitution because their benefits had already accrued, and vested with them. The court agreed with the APFRS. The court found that the members had a vested interest in the surpluses generated by their plans and that using the new actuarial tables for calculating benefits violated their constitutional rights. The court reasoned that the members were entitled to have the level of rights and benefits preserved in substance without any modification downwards. The existence of a “contract right” is not denied merely because the money is payable in the future and only on the happening of an uncertain event or because someone has a power of termination or modification. If a right has to be “vested” in order to be recognized and protected, these rights are vested. It is immaterial whether the parties “expect” or “hope” that payment will take place.

Board of Trustees, Anchorage Police and Fire Retirement System v. Municipality of Anchorage, 144 P.3d 439 (2006) (**employer/employee grievance settlement costs borne by system**): An arbitrator ruled that a terminated police officer had to be reinstated with back pay and benefits for the two-year period after his termination. The superior court judge concluded that the adverse employment action that triggered the increased actuarial liability was not directed at the System’s pension plan. Also, he concluded that the liability risk was inherent to the System. In the second matter, however, another superior court judge concluded that requiring the System to absorb a grievance settlement’s impact was unconstitutional pursuant to Alaska Const. art. XII, § 7. The supreme court concluded that the police officer’s retroactive compensation was calculated just as contemplated by the System’s pension plan. Also, the fact that the Board was not a party to the police officer’s grievance did not change the result. The grievance awards increased the System’s costs and impacted the ability of members to receive surplus benefits; however, allowing the System to absorb losses from grievance settlements did not change the basic operations of the System or unconstitutionally impair a vested right. The System provided for retroactive compensation due to grievance settlements.

Duncan v. Retired Public Employees of Alaska, Inc., 71 P.3d 882 (Alaska 2003) (**health benefits included in retirement benefits**): Retirees sued alleging that changes to the state’s group health insurance plan violated the Alaska constitution by diminishing their benefits. The Alaska constitution protects “accrued benefits” of public employees from being diminished or impaired, but benefits may be changed if any detriments are offset by advantages. The Alaska Supreme Court held that “accrued benefits” in the state constitution includes health insurance benefits offered to public employee retirees, and that those benefits, along with the full retirement benefit package, become part of the contract of employment when the public employee is hired. The

Court reaffirmed its prior decision that “the prohibition on diminishment or impairment of retirement benefits does not mean that retirement benefits are unchangeable;” rather, “benefits can be modified so long as the modifications are reasonable, and one condition of reasonableness is that **disadvantageous changes must be offset by comparable new beneficial changes.**” The Court held that the comparative analysis of the disadvantages and compensating advantages of changes to health insurance should be made by examining the effects on the **entire group of employees rather than particular individuals.**

Arizona

A.R.S. Const. Art. II, § 25 (2007)

§ 25. Bills of attainder; ex post facto laws; impairment of contract obligations

Section 25. No bill of attainder, ex-post-facto law, or law impairing the obligation of a contract, shall ever be enacted.

Yeazell v. Copins, 98 Ariz. 109, 402 P.2d 541 (1965) (**rights vested on employment**): Retired police officer argued that the pension board had to compute his retirement in accordance with the law as it existed in 1942 when he joined the force. Arizona Supreme Court held that the pension provisions were part of the police officer's contemplated compensation. The officer had a right to the benefits when he accepted his employment, and the city could not change the retirement benefits without his consent. Since the original statute had been part of the retirement system at the time the officer had accepted employment, he was entitled to take advantage of its terms. The police officer's **rights in the pension vested at the time that he began his employment.** Any subsequent changes to the pension system were inappropriate unilateral modifications to the contract between the officer and the state. Court stated, “He who asserts the modification of a contract has the burden of proof. If Tucson were to assert a modification of the contract, then it is its burden to establish appropriate grounds therefor. We do not, however, mean to imply what rights or remedies might be available to either party in a situation where it is established that a retirement plan is actuarially unsound. This is a matter beyond the issues of the present litigation.” 98 Ariz. at 116-117 (internal citations omitted).

Fund Manager, Pub. Safety Personnel Retirement Sys. v. Phoenix Police Dep't Pub. Safety Personnel Retirement Sys. Bd., 151 Ariz. 487, 728 P.2d 1237 (Ariz. Ct. App. 1986) (**different disability vesting**): Police officer was injured. Under the definition of accidental disability in effect at the time he was hired, he was entitled to a disability pension. However, under the amended definition in effect when he was injured, he was not entitled to a benefit because he was able to perform other duties within his department. Retirement system board (board) awarded the officer accidental disability benefits, applying the definition of accidental disability in effect when he was hired. On appeal, the court reversed and remanded, holding that the right to an accidental disability pension did not vest until the contingent event of injury occurred; therefore, the amended version of the statute applied. Whereas in *Yeazell*, the employee's right to receive a retirement pension vested at the time his employment began, here the police officer's accidental disability pension did not vest at the time of his employment. The court stated, “we hold that a public employee's right to or interest in a disability pension vests upon the occurrence of the event or condition which would qualify him for such pension -- the injury.” Id. at 489.

Arkansas

Ark. Const. Art. 2, § 17 (2007)

§ 17. Attainder - Ex post facto laws.

No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall ever be passed; and no conviction shall work corruption of blood or forfeiture of estate.

Jones v. Cheney, 253 Ark. 926, 489 S.W.2d 785 (1973) (**contractual rights impaired**): Court holds amendments making plaintiff ineligible for benefits subsequent to having fulfilled his service requirement but prior to his actual retirement were an impairment of contract. The plan under review was funded entirely by contributions from the employee, making it more in the nature of an annuity.

California

Cal Const, Art. I § 9 (2007)

§ 9.

A bill of attainder, ex post facto law, or law impairing the obligation of contracts, may not be passed.

Allen v. City of Long Beach, 45 Cal.2d 128, 287 P.2d 765 (Cal. 1955) (**vested contractual rights impaired**): The city made various changes to pension rights under the city charter, which affected the rights of plaintiffs. The California Supreme Court stated that plaintiffs' pension rights were substantially decreased without offering any commensurate advantages. Additionally, the provision changing the pension system to a fixed benefit plan from the previous plan of fluctuating benefits adversely affected plaintiffs' rights. The court found no justification for materially reducing the vested contractual rights earned by plaintiffs prior to the time of the amendments and, accordingly, they were invalid. The court held, "An employee's vested contractual pension rights may be modified prior to retirement for the purpose of keeping a pension system flexible to permit adjustments in accord with changing conditions and at the same time maintain the integrity of the system. Such modifications must be reasonable, and it is for the courts to determine upon the facts of each case what constitutes a permissible change. To be sustained as reasonable, **alterations of employees' pension rights must bear some material relation to the theory of a pension system and its successful operation, and changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages.**" 45 Cal.2d at 131 (internal citations omitted).

Betts v. Board of Administration of Public Employees' Retirement System, 21 Cal. 3d 859 (Cal. 1978) (**vested contractual rights impaired**): A retired state treasurer argued that application of the 1974 amendment to the Legislators' Retirement Law interfered with his vested contractual right to an earned pension. The court concluded the petitioner was entitled to benefits computed on the basis of the salary of the current treasurer, under the law as it existed in 1967, when petitioner left office. The 1974 amendments replaced a fluctuating system of computing retirement benefits with a fixed system. The court held that an employee's vested contractual

pension rights may be modified, but to be sustained as reasonable, the alterations must bear some material relation to the theory of a pension system and its successful operation, and changes in a pension plan which resulted in disadvantage to employees should be accompanied by comparable new advantages. The Court stated, “An **employee’s contractual pension expectations are measured by benefits which are in effect not only when employment commences, but which thereafter conferred during the employee’s subsequent tenure.**” 21 Cal. 3d at 866. The 1974 amendment could not constitutionally be applied to petitioner, because it withdrew benefits to which he earned a vested contractual right while employed, with no comparable new advantage.

Valdez v. Cory, 139 Cal. App. 3d 773, 189 Cal. Rptr. 212 (Cal. Ct. App. 1983) (**contractual rights impaired**): The state legislature enacted a law, which, in part, prohibited payment of state-employer contributions from the state general fund to the public employees' retirement fund. Petitioners were either active or retired state employees who were members of the public employees' retirement system (PERS), and challenged the law as a violation of the constitutional prohibition against impairment of contracts. The court ruled that a public employee's pension constituted an element of compensation and that a vested contractual right to pension benefits accrued upon acceptance of employment. Further, the court held that a pension right could not be destroyed, once vested, without impairing a contractual obligation of the employing public entity. Also, the court found that the state and other public employers were contractually bound in a constitutional sense to pay the withheld appropriations to the PERS fund. The court granted the petition, concluding that once paid, appropriated employer contributions constituted a trust fund held solely for the benefit of PERS members and beneficiaries. In determining that this legislation was unconstitutional, the court reasoned that, although the state's action had not reduced employee benefits under the system, the **state could not suspend or reduce its statutorily defined contributions “absent actuarial input” to ensure that the system would remain actuarially sound.** 189 Cal. Rptr. at 223.

Thoring v. Hollister Sch. Dist., 11 Cal. App. 4th 1598 (1992) (**vested right to health benefits**): Retired school board members sued after their post-retirement health benefits were suspended. The California Court of Appeal held that the plaintiffs had a vested right to post-retirement continuation of health benefits. The Court stated that **health benefits were similar to pension benefits and could not be unilaterally terminated** because they were important as inducement for continued service and as a factor in the decision to retire. The Court also held that pension rights are obligations protected by the contracts clause of the federal and state constitutions.

Sappington v. Orange Unified Sch. Dist., 119 Cal. App. 4th 949 (2004) (**no impairment of health benefit rights**): Retired employees of a school district alleged that they had a vested right under a district policy to free health insurance under a preferred provider organization (PPO) plan. The policy adopted by the school district stated that the district “shall underwrite the cost of the District’s Medical and Hospital Insurance Program for” eligible retirees. The district provided a free PPO benefit for 20 years, but the plaintiffs sued when the district began to require retirees electing PPO coverage to pay certain charges. The trial court ruled that the retirees had a vested right to retirement medical benefits under the district policy and that this right was protected by the constitution, but held that the policy did not require the district to offer PPO coverage free of charge. The Court of Appeal affirmed. It stated that the district policy only promised retirees that the district would provide a medical insurance program in which they

could enroll and subsidize their costs for enrolling in one of the plans offered. The policy did not give the retirees a vested right to free PPO coverage. The policy's use of the word "underwrite" did not constitute a promise to pay the entire cost for enrolling in a district plan.

Colorado

Colo. Const. Art. II, Section 11 (2006)

Section 11. Ex post facto laws

No ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges, franchises or immunities, shall be passed by the general assembly.

Peterson v. Fire and Police Pension Assoc., 759 P.2d 720 (Colo. 1988) **(no impairment of pension rights prior to vesting)**: Colorado Supreme Court holds that, "prior to a police officer's or fire fighter's death, there is limited or partial vesting of survivor benefits. Until survivor benefits fully vest, a pension plan can be changed; however, any adverse change must be balanced by a corresponding change of a beneficial nature, a change that is actuarially necessary, or a change that strengthens or improves the pension plan." "To justify the monetary loss suffered by the petitioners, there must be a corresponding change of a beneficial nature or the change must be actuarially necessary." *Id.* at 725. Court finds that the General Assembly's modification of survivor benefits was proper because "the financial loss experienced by the petitioners is offset by the creation of a fund that will ensure that the petitioners' future benefits are funded by a stable and actuarially sound pension fund." *Id.*

Colorado Springs Fire Fighters Ass'n, Local 5 v. City of Colorado Springs, 784 P.2d 766 (Colo. 1989) **(no contractual right to health insurance benefits)**: The trial court held that a city ordinance providing health benefits for retired city employees created a vested pension right to receive benefits, and that later ordinances that limited the city's premium contribution were in violation of the contracts clause of the state and federal constitutions. The Colorado Supreme Court reversed, finding that the ordinance did not create a pension benefit or a contractual obligation. Although accrued rights under a pension plan are contractual rights under the state and federal constitutions, the Court determined that health insurance benefits are not pension-type benefits because, unlike the state's mandatory pre-funded pension plan, city employees are not required to contribute a percentage of their salary to fund the health insurance plan, the cost and design of the plan were subject to change and employee participation was optional.

The Court noted that Congress had distinguished health and welfare benefits (such as health insurance) from pension benefits under ERISA and excluded health and welfare benefits from mandatory vesting requirements that are applied to other retirement benefits. The Court also stated that a "statute or ordinance will be considered a contract, subject to the provisions of the contracts clause, only when its language and the surrounding circumstances manifest a legislative intent to create private contractual rights," and found that the city ordinance at issue "contained no words of contract and did not require the consent of city employees to become effective." Furthermore, the ordinance did not address the level of benefits to be provided, and

the Court found it “unlikely that such a material term would be left undefined if the City intended to create a contractual obligation.”

Connecticut

Pineman v. Oechslin, 195 Conn. 405, 488 A.2d 803 (Conn. 1985) (**statutory, not contractual pension rights**): Plaintiff state employees sought a judgment declaring that the pre-1975 State Employees Retirement Act (Act) created a contractual obligation for Connecticut to maintain the pre-1975 retirement ages for female employees who had not begun receiving benefits when the Act was revised. The Act had originally permitted female employees to retire at age 50 with 25 years of service. To achieve equal treatment of female and male employees, the Act was amended to permit female employees to retire at age 55 with 25 years of service. The court held that the Act conferred no contractual rights in the statutory pension plan on state employees. A statute does not create vested contractual rights absent a clear statement of legislative intent to contract. There was no clear expression by the legislature that the Act was intended to create vested contractual rights in state employees prior to the satisfaction of all eligibility requirements. Although that statutory retirement plans do not create contractual rights, Connecticut recognizes a vested right to receive pension benefits created by statute, which accrues once a retiree satisfies the requirements for eligibility. This **statutory right is protected “from arbitrary legislative action under the due process provisions of the state and federal constitutions.”** 195 Conn. at 417.

Delaware

Petras v. State Board of Pension Trustees, 464 A.2d 894 (Del. 1983) (**no impairment of contractual rights before vesting**): When plaintiff, a retired school teacher, came to Delaware in 1964, the state pension law permitted teachers to receive up to four years credit for out of state professional educational employment. To receive a pension under the law then in effect, an employee had to have either 30 years of service, or be more than 60 years old with 15 years of service. The Court concluded that “no contract exists between an employee and the State, concerning the state pension plan, unless and until the pension vests.” 464 A.2d at 896. Plaintiff had only completed two years service before the law relating to the receipt of credit for time spent teaching in other states was changed, and therefore had no vested right in that provision or in the plan as a whole. The Court therefore held the General Assembly’s modification of the pension plan did not violate any contractual right. *Id.*

Florida

Fla. Const. Art. I, § 10 (2007)

§ 10. Prohibited laws

No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.

Fla. Const. Art. X, § 14

A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Florida Sheriffs Ass'n v. Department of Administration, 408 So. 2d 1033, 1036-1037 (Fla. 1981) **(no impairment of contractual rights before retirement)**: Retirement benefit, calculated by a percent per year of creditable service times average monthly compensation, was increased to three percent per year for service after September 30, 1974, effective October 1, 1978, the Legislature reduced the three percent service credit to two percent. The Supreme Court of Florida held that the reduction was valid. The court stated that a retired employee has a vested right in the amount of his pension and a subsequent enactment could not change that. However, active employees had no such vested right. Therefore, the Legislature could change benefits for active employees, even reduce them, for given years of service prior to retirement. *See* Richard A. Sicking, "Shoot the Patient or Find the Cure: The Florida Constitutional Requirement that Increases in Public Employee Pensions be Funded on a Sound Actuarial Basis," 18 Nova L. Rev. 1465 (1994), recounting the history of the constitutional provision, its statutory implementation, and the Florida Association of Counties and other cases, and raising questions whether an unfunded benefit must therefore end or whether the court can instead enforce funding.

Georgia

Ga. Const. Art. I, § I, Para. X (2007)

PARAGRAPH X. Bill of attainder; ex post facto laws; and retroactive laws

No bill of attainder, ex post facto law, retroactive law, or laws impairing the obligation of contract or making irrevocable grant of special privileges or immunities shall be passed.

Bender v. Anglin et al., 207 Ga. 108, 60 S.E.2d 756 (1950) **(vested contractual rights impaired)**: The pensioner was a fireman for the City of Atlanta, Georgia (City) prior to his retirement. When he was hired and began paying into the pension fund, the monthly pension amount was \$100, pursuant to 1924 Ga. Laws 167 (1924 Act). During the course of his employment, the 1924 Law was amended by 1931 Ga. Laws 223 (1931 Act), which reduced the monthly pension amount to \$75. Upon his retirement, the pensioner was paid \$75 a month. On appeal, the court concluded that the superior court erred in sustaining the Board's demurrers and in dismissing the pensioner's petition. The court found that because the pension plan was not gratuitous, but required employee contribution, the plan created a contract between the City and the pensioner. The court concluded that the pensioner had a right under the contract to a pension in the amount of \$100 and that the 1931 Act constituted an ex post facto law in violation of Ga. Const. art. I, § III, para. II. The court held that as the pensioner was a party to the contract created by the 1924 Act, even though he did not retire until after the 1935 Act was adopted, he had a vested right in the \$100 per month pension.

Unified Government of Athens-Clarke County v. McCrary et al., 280 Ga. 901, 635 S.E.2d 150 (2006) **(vested right to health insurance coverage)**: The parties stipulated that the Unified

Government had provided all its retirees hired before 1994 with cost-free health insurance coverage. The amount of health insurance coverage provided to a retiree was the level of coverage maintained by the retiree upon leaving employment. The retirees had a vested right in free health insurance at whatever level they had when they retired. The retirees, however, were not entitled to cost-free preferred provider organization level benefits rather than health maintenance organization (HMO) level benefits. Under the stipulation, the precise source of the retirees' cost-free medical coverage was not guaranteed. Instead, they were only entitled to cost-free coverage to the same extent that their medical expenses were covered at the time of their retirement. Cost-free coverage was provided by the Unified Government only under the HMO option. Requiring the retirees to elect the HMO option if they wished to receive cost-free coverage did not violate Ga. Const. art. I, § 1, para. X, since they never had a vested right to maintain in retirement the precise health-care delivery system by which they received their coverage while employed.

Hawaii

HRS Const. Art. XVI, § 2 (2007)

Section 2. EMPLOYEES' RETIREMENT SYSTEM.

Membership in any employees' retirement system of the State or any political subdivision thereof shall be a contractual relationship, the accrued benefits of which shall not be diminished or impaired.

Kaho'ohanohano v. State, 162 P.3d 696 (Haw. 2007) (**contractual rights impaired**): Hawai'i Act 100 retroactively reduced the amounts the State and counties contributed to the Employees' Retirement System of the State of Hawai'i (ERS) by crediting actuarial investment earnings in excess of 10% of the actuarial investment yield rate toward contributions. The State was granted summary judgment on the claims of the ERS members and trustees that Act 100 was unconstitutional. The court remanded the case for dismissal of the members' claims for lack of standing because they failed to allege that they received any pension benefit to which they were entitled and suffered an actual or threatened injury. The court held that the trustees had standing as fiduciaries and were entitled to a declaratory judgment that Act 100 violated Haw. Const. art. XVI, § 2, which was patterned after the New York system, because Act 100 retroactively divested the ERS of contributions, eliminated the sources used to fund constitutionally protected "accrued benefits," and undermined the retirement system's continuing security and integrity.

Idaho

Idaho Const. Art. I, § 16 (2007)

§ 16. Bills of attainder, etc., prohibited

No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall ever be passed.

Deonier v. Public Employee Retirement Bd., 114 Idaho 721 (Idaho 1988) (**vested contractual rights impaired**): Firefighters negotiated lump sum monetary worker's compensation

settlements for work-related injuries. After their involuntary retirements, the firefighters sought disability retirement benefits. The State of Idaho Public Employee Retirement System Board granted the benefits but offset the amount of the lump sum worker's compensation benefit. The Industrial Commission of the State of Idaho (commission) affirmed the setoff. Both parties appealed. On appeal, the court reversed. The court held that retirement benefits under the Firemen's Retirement Fund (FRF) were deferred compensation and that requiring the firefighters to contribute to the cost of their worker's compensation benefits violated Idaho Code § 72-318. Further, offsetting under the FRF impaired the constitutional right to contract because the altered interpretation of Idaho Code § 72-1414 materially changed the firefighters' contractual expectations regarding their vested rights to receive FRF retirement benefits. Court stated, "the **rights of the employees in pension plans such as Idaho's Retirement Fund Act are vested, subject only to reasonable modification for the purpose of keeping the pension system flexible and maintaining its integrity.**" Id. at 726.

Illinois

Illinois Const., Art. I, § 16 (2007)

SECTION 16. Ex Post Facto Laws and Impairing Contracts

No ex post facto law, or law impairing the obligation of contracts or making an irrevocable grant of special privileges or immunities, shall be passed.

Illinois Const., Art. XIII, § 5 (2007)

SECTION 5. Pension and Retirement Rights

Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.

People ex rel. Illinois Federation of Teachers v. Lindberg, 60 Ill. 2d 266 (Ill. 1975) (**no contractual right to funding**): The Supreme Court of Illinois refused to recognize the contractual protection to require a certain level of system funding to maintain actuarial soundness. The issue arose when Illinois' governor decided to reduce amounts that the state's legislature designated for three teacher pension funds to remedy system under-funding. The court explained that the "tenor" of the debate over Illinois' provision was "primarily concerned" with assuring pension plan members that they would "receive the money due them" when they retired. The court acknowledged concern at the constitutional debates that the state's pension system should be adequately funded "in accordance with actuarial principles." The court found, however, that the debates "did not establish the intent to constitutionally require a specific level of pension appropriations during a fiscal period," and so the constitution did not afford a basis to challenge the governor's action. The court rejected a further argument that the Illinois Pension Code independently implied a contract right. Finding no contract right, the court declined to examine whether the governor's action could be a contract impairment under either the federal or Illinois constitutions.

People ex rel. Sklodowski v. State, 182 Ill. 2d 220, 695 N.E.2d 374 (Ill. 1998) **(no contractual right to funding)**: Retirees brought suit to require the state and officials to comply with the statutory funding levels of state pension plans under Public Act 86-273. The court reaffirmed its earlier holding that the Pension Protection Clause, **Ill. Const. art. XIII, § 5 “does not create a contractual basis for participants to expect a particular level of funding, but only a contractual right that they would receive the money due them at the time of their retirement”** and that the General Assembly did not intend “to create any ‘vested’ contractual relationship in the Pension Code that would allow participants to enforce funding provisions.” 182 Ill. 2d at 230. In addition to rejecting the plaintiffs’ funding claim, the court also rejected their claim that their benefits were at risk. The court stated that, “although the pension protection clause protects benefits, not funding, a beneficiary need not wait until benefits are actually diminished to bring suit under the clause.” *Id.* at 232. The court held that in this case, however, the allegations of under-funding were insufficient to constitute an impairment of benefits because “[t]he claims contain no factual allegations that would support a finding that the funds at issue are ‘on the verge of default or imminent bankruptcy’ such that benefits are in immediate danger of being diminished.” *Id.* at 233. The court therefore found neither a vested contractual nor constitutional right for the retirees to enforce the level of state contributions mandated by Public Act 86-273.

Indiana

Ind. Const. Art. 1, § 24 (2007)

§ 24. Ex post facto laws - Laws impairing obligations of contract.

No ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

Haverstock v. State Public Employees Retirement Fund, 490 N.E.2d 357 (Ind. Ct. App. 1986) **(no contractual rights)**: Court affirmed the trial court’s grant of summary judgment in favor of the public employees retirement fund and against a class of employees challenging the retroactive application of a new pension plan. The court stated that, because appellants’ participation in the pension plan was compulsory, they had no contractual rights in the plan that was operating at the time they were hired. Therefore, the retroactive effect of the new pension plan did not result in an unconstitutional impairment of contractual rights under either U.S. Const. art. I, § 10 or Ind. Const. art. I, § 24. Court stated, **“Pensions are mere gratuities springing from the appreciation and graciousness of the state. Under such a plan, the employee has no vested contract rights until he fulfills all conditions existing at the time of his application for benefits.”** 490 N.E.2d at 361 (citing *Klamm v. State of Indiana ex rel. Carlson*, 235 Ind. 289, 292, 126 N.E.2d 487, 489 (1955)).

Iowa

Iowa Const., Art. I § 21 (2006)

Sec. 21. Attainder -- ex post facto law -- obligation of contract.

No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

Talbott v. Independent School District of Des Moines, 230 Iowa 949, 299 N.W. 556 (1941) (**no impairment of contractual rights**): Iowa Supreme Court holds: A teacher who is eligible for retirement does not have absolutely vested rights in a pension and her rights are subject to an amending resolution by the board of directors of the school district. When the pension reserve fund became low and the board changed the retirement age in order to preserve the fund, no rights of the teacher was invaded and she had no right to a pension until she attained the new age limit established by the board.

Koster v. City of Davenport, 183 F.3d 762 (8th Cir. 1999) (**no impairment of contractual rights**): Members of a retirement system sought injunctive and declaratory relief against cities, which were participating employers in the statewide plan. A state statute created a statewide pension plan to replace the local municipal plans and allow each city to use excess funds to offset either the employees' and city's future contributions to the plan or only the city's future contributions to the plan. Each city chose to use its excess to fund only the city's future contributions. The retirement system members claimed that the cities violated their constitutional rights by using statewide plan assets to offset the cities' future contributions to the plan. The court affirmed the district court's grant of summary judgment to the cities because their act of using excess funds to reduce their future contributions to the pension plan did not impair the members' contract rights. The court stated, "**If there is any impairment to the members' alleged contractual rights, we conclude that it is not central to the claimed contract because it does not diminish the value of the members' benefits or compromise the soundness of the plan.**" *Id.* at 768.

Kansas

Singer v. Topeka, 227 Kan. 356, 607 P.2d 467 (1980) (**contractual rights created by retirement system**): Kansas Supreme Court holds that the public employees retirement system creates contracts between the state and its employees who are members of the system. The employees were firemen and policemen. The city deducted seven percent from the employees' paychecks as contribution to pension funds. The court held the legislature intended to impose duties upon the Kansas Public Employees Retirement System that were legally enforceable. The court also determined that the employees did not have vested contract rights that could not be altered unilaterally within the protection of the contract clause. Although not all elements of the contract vest on the first day of employment, "[c]ontinued employment over a reasonable period of time during which substantial services are furnished to the employer, plan membership is maintained, and regular contributions into the fund are made, however, cause the employee to acquire a contract right in the pension plan." The court found that, subject to certain limitations, the city could unilaterally change or modify pension plans in which the employees held vested contract rights. The court noted that the challenged statutes, to the extent that they more than doubled employee contributions without increasing benefits, imposed a substantial detriment on the employees. The court stated, "**We hold that the state or a municipality may make reasonable changes or modifications in pension plans in which employees hold vested contract rights, but changes which result in disadvantages to employees must be accompanied by offsetting or counterbalancing advantages.**" 227 Kan. at 367.

Kentucky

Ky. Const. § 19 (2006)

§ 19. Ex post facto law or law impairing contract forbidden - Rules of construction for mineral deeds relating to coal extraction.

(1) No ex post facto law, nor any law impairing the obligation of contracts, shall be enacted.

KRS § 61.692 (2006)

61.692. Benefits not to be reduced or impaired - Exception.

It is hereby declared that in consideration of the contributions by the members and in further consideration of benefits received by the state from the member's employment, KRS 61.510 to 61.705 shall, except as provided in KRS 6.696 effective September 16, 1993, constitute an inviolable contract of the Commonwealth, and the benefits provided therein shall, except as provided in KRS 6.696, not be subject to reduction or impairment by alteration, amendment, or repeal.

KRS § 61.702 (2006)

61.702. Group hospital and medical insurance and managed careplan coverage.

(8)(d) The benefits of this subsection provided to a member whose participation begins on or after July 1, 2003, shall not be considered as benefits protected by the inviolable contract provisions of KRS 61.692, 16.652, and 78.852. The General Assembly reserves the right to suspend or reduce the benefits conferred in this subsection if in its judgment the welfare of the Commonwealth so demands.

Louisiana

La. Const. Art. I, § 23 (2007)

§ 23. Prohibited laws

No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be enacted.

La. Const. Art. X, § 29 (2007)

§ 29. Retirement and survivor's benefits

B. The legislature shall enact laws providing for retirement of officials and employees of the state, its agencies, and its political subdivisions, . . . through the establishment of one or more retirement systems. Membership in any retirement system of the state or of a political subdivision thereof shall be a contractual relationship between employee and employer, and that

state shall guarantee benefits payable to a member of a state retirement system or retiree or to his lawful beneficiary upon his death.

E(1) *Actuarial Soundness*. --The actuarial soundness of state and statewide retirement systems shall be attained and maintained and the legislature shall establish, by law, for each state or statewide retirement system, the particular method of actuarial valuation to be employed for purposes of this Section.

E(5). All assets, proceeds, or income of the state and statewide public retirement systems, and all contributions and payments made to the system to provide for retirement and related benefits shall be held, invested as authorized by law, or disbursed as in trust for the exclusive purpose of providing such benefits, refunds, and administrative expenses under the management of the boards of trustees and shall not be encumbered for or diverted to any other purpose. The accrued benefits of members of any state or statewide public retirement system shall not be diminished or impaired. Future benefit provisions for members of the state and statewide public retirement systems shall only be altered by legislative enactment.

Louisiana State Troopers Assoc. v. Louisiana State Police Retirement Board, 417 So. 2d 440 (La. App. 1975) (**no impairment of contractual rights**): Court holds that the legislature “may legitimately make changes and modifications in the details of retirement systems to the prejudice of employees prior to the time that they have achieved eligibility for the purpose of improving actuarial integrity of the system.” Court stated: “We believe that the acts of the legislature in the instant case withdrawing entitlement to the purchase service credits for prior employment and increasing the percentage of payment required to purchase credits are **legitimate acts for improving the actuarial integrity of the System and are not unconstitutional**.” Court states that it has been held that the legislature, to maintain the actuarial soundness of the system, can validly enact laws to change the inchoate retirement right of employees to (1) increase the required length of service from sixteen years to twenty years, (2) offset disability benefit payments under a retirement system by the amount of workmen’s compensation benefits received for the same disability, (3) require an employee who has membership in two public retirement systems to choose one and require that the system dropped refund all contributions at the rate of 5% simple interest, and (4) change an alternate retirement program of age 70 or 15 years service to a mandatory retirement at age 65.

Smith v. Bd. of Trustees of La. State Employees Ret. Sys., 851 So. 2d 1100 (La. 2003) (**no impairment of vested contractual rights**): The state legislature amended a state statute to permit a reemployed retiree to receive a salary plus full retirement benefits after a 12-month waiting period, regain membership in the Louisiana State Employees Retirement System, and earn a supplemental benefit, if reemployed for over 36 months. The following year, the legislature repealed the amendment and enacted La. Rev. Stat. Ann. § 11:416.1, which applied specifically to the retirees who retired and been rehired during the 10-month interim period under the amended statute. Plaintiffs, who retired and was rehired during the interim period, asserted, and the trial court agreed, that § 11:416.1 was unconstitutional, as it impaired their vested and contractual rights. In reversing the trial court’s decision, the court held that § 11:416.1 did not violate La. Const. art. X, § 29(E)(5), which prohibited the impairment of accrued benefits of members of any state retirement system, or the Contracts Clauses of the U.S. Constitution and the Louisiana Constitution. The court held that, because the law was changed prior to the time

plaintiffs fulfilled the 12-month waiting period or were reemployed for 36 months, no accrued or vested rights were impaired.

Maine

Me. Const. Art. I, § 11 (2007)

§ 11. Attainder, ex post facto and contract-impairment laws prohibited

Section 11. The Legislature shall pass no bill of attainder, ex post facto law, nor law impairing the obligation of contracts, and no attainder shall work corruption of blood nor forfeiture of estate.

Spiller v. Maine, 627 A.2d 513 (Me. 1993) (**no contractual rights created**): During a budgetary shortfall, the state legislature adopted statutory modifications to the pension benefits that it provided state employees. Plaintiffs filed an action seeking a declaration that the modifications were unconstitutional and an injunction that enjoined the enforcement of the modifications. The Maine Supreme Judicial Court held that absent a clear indication that the legislature intended to bind itself contractually, there was a presumption that the law did not create a private contract or right. The court found that the retirement statutes were general policy principles and did not contain a clear indication of an intent to create immutable contracts for all state employees. Therefore, the court held there was no constitutional violation because the statutes did not create any contractual rights.

Maryland

Davis v. Mayor of Annapolis, 98 Md. App. 707, 635 A.2d 36 (Md. App. 1994) (**no impairment of contractual rights**): Police officer applied to the disability retirement board (board) to determine his ability to function as a police officer and for disability benefits. At the time the police officer was injured, the applicable city ordinance provided for disability benefits based on permanent incapacity from active service. A subsequent ordinance changed the applicable standard to a permanent incapacity from engaging in any occupation or from performing any job in the police department. The board applied the subsequent standard and denied the police officer's application. On appeal, the court remanded the case in order for the board to reconsider the police officer's claims under the standard in effect at the time of his injury. The court ruled that the ordinance in effect at the time of the injury was applicable. The court determined that the police officer's contractual rights to disability benefits vested under his previous pension contract prior to the adoption of the new ordinance and that the new ordinance applied only prospectively to disability rights that had not yet arisen. Court states “**pension benefits are contractual, but under certain circumstances the government may unilaterally modify them so long as the changes do not adversely alter the benefits, or if the benefits are adversely altered, they are replaced with comparable benefits.**”

Massachusetts

Mass. Gen. Laws ch. 32, § 25

(5) Effect of Amendments or Repeal. -The provisions of sections one to twenty-eight, inclusive, and of corresponding provisions of earlier laws shall be deemed to establish and to have established membership in the retirement system as a contractual relationship under which members who are or may be retired for superannuation are entitled to contractual rights and benefits, and no amendments or alterations shall be made that will deprive any such member or any group of such members of their pension rights or benefits provided for thereunder, if such member or members have paid the stipulated contributions specified in said sections or corresponding provisions of earlier laws.

Madden v. Contributory Retirement Appeal Bd., 431 Mass. 697, 729 N.E.2d 1095 (2000) (**no impairment of contractual rights**): Massachusetts Supreme Judicial Court states that, since state retirement system creates contractual relationship between its members and state, there can be no change that deprives members of benefits as long as they have paid required contributions. Court holds that, applying a regulation allowing Teachers' Retirement Board to prorate part-time service of teacher for purposes of calculating retirement benefits, to post-1990 part-time service was not an impairment of vested contractual rights, but was reasonable modification to teacher retirement system adopted to correct disparity that allowed teachers who had rendered part-time service all but three years to receive same retirement benefits as those who served full-time exclusively. **Modifications to the retirement scheme must be “reasonable and bear some material relationship to the theory of a pension system and its successful operation.”** 431 Mass. at 701.

Michigan

MCLS Const. Art. I, § 10

§ 10. Attainder; ex post facto laws; impairment of contracts.

Sec. 10. No bill of attainder, ex post facto law or law impairing the obligation of contract shall be enacted.

MCLS Const. Art. IX, § 24

§ 24. Public pension plans and retirement systems, obligation.

Sec. 24. The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby. Financial benefits, annual funding. Financial benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be used for financing unfunded accrued liabilities.

Kosa v. Treasurer of the State of Michigan, 292 N.W.2d 452 (Mich. 1980) (**no impairment of contractual rights**): The Michigan Supreme Court refused to strike down a legislative scheme permitting the use of monies reserved for future benefits to pay those currently coming due. The

case involved the funding of the Michigan Public School Employees' Retirement System. The Court noted that, as far as the constitutional protection was concerned, the case turned on the term "accrued financial benefits." Plaintiffs' challenge, the court observed, was not about public employees not receiving pension benefits due them, for the state had met its obligation to current beneficiaries. Rather, the question was whether article nine, section twenty four, could ensure that monies would be available for the payment of benefits not yet due. The court acknowledged that there was some "logical or historical connection" between "accrued financial benefits" and systematic funding to ensure those benefits. It conceded that "if appropriations to pension reserves [were] consistently less than payments of pension benefits, the time [would] come when reserves [would] be exhausted." However, given that the constitutional protection was limited to "accrued financial benefits," the court stated that no impairment could exist.

Studier v. Mich. Pub. School Employees' Retirement Board, 472 Mich. 642, 698 N.W.2d 350 (2005) **(no contractual right to health care benefits)**: The Michigan Supreme Court held that health care benefits do not constitute a contractual right subject to the prohibition against impairment of contracts. A group of public school retirees sued their retirement system and its board alleging 1) that health care benefits for retirees were "accrued financial benefits" protected by the Michigan constitution and 2) that a state statute establishing health care benefits created a contract with the retirees subject to the contracts clause of the U.S. Constitution. Regarding the first issue, the Michigan constitution prohibited the state from diminishing or impairing "accrued financial benefits" of the retirement system, and required the state to fund those benefits during the fiscal year. The Supreme Court held that health care benefits were not protected by these provisions because health care benefits "neither qualify as 'accrued' benefits nor 'financial' benefits as those terms were commonly understood at the time of the Constitution's ratification and, thus, are not 'accrued financial benefits.'"

On the second issue, the Court held that the state statute authorizing health care benefits for retirees did not create a contractual right. The statute provided that "[t]he retirement system shall pay the entire monthly premium or membership . . . for hospital, medical-surgical, and sick care benefits . . . of a retirant . . . who elects coverage in the plan authorized by the retirement board and the department." The Court of Appeals held that this statute created for public school retirees a contractual right to receive health care benefits, but determined that the co-pay and deductible increases that were implemented by the board did not amount to a substantial impairment of that contractual right. The Supreme Court reversed and held that the statute did not create for retirees a contractual right to receive health care benefits. The Supreme Court stated, "a fundamental principle of the jurisprudence of both the United States and this state is that one legislature cannot bind the power of a successive legislature" and that there "is a strong presumption that statutes do not create contractual rights." The plaintiffs failed to overcome this strong presumption because the statute did not use terms typically associated with contractual rights such as "contract," "covenant," or "vested rights." In addition, the statute did not require the board to authorize a particular health care plan, did not require the board to authorize a plan containing specified deductibles or co-pays, and did not state that changes to the plans or payment obligations would never be made.

Minnesota

Minn. Const., Art. I, § 11 (2006)

Sec. 11. Attainders, ex post facto laws and laws impairing contracts prohibited

No bill of attainder, ex post facto law, or any law impairing the obligation of contracts shall be passed, and no conviction shall work corruption of blood or forfeiture of estate.

Christensen v. Minneapolis Municipal Employees Retirement Board, 331 N.W.2d 740 (Minn. 1983) (**contractual rights impaired**): When city council member retired at age 38 he began receiving pension payments because, at that time, former elected officials could receive pension payments after 10 years of service regardless of their age. The State then enacted Minn. Stat. § 422A.156 (1982), which suspended further pension payments to retired officials until they attained the age of 60. The retired official filed suit, contending that § 422A.156 was unconstitutional. On appeal, the Minnesota Supreme Court held that: (1) prior to the enactment of § 422A.156, the official was entitled to begin receiving his pension when he retired; (2) the gratuity theory of public pensions was no longer applicable; (3) **a public employee's interest in a pension was best characterized in terms of promissory estoppel**; (4) the State's promise that the retired official would be paid a pension when he retired was binding on the State; and (5) § 422A.156 was invalid as an unconstitutional impairment of contractual obligations to the extent that it purported to apply to elected city officials already retired at the time of its enactment. The court stated, "Here the state has not promised its employees any pension as a matter of contract right. What it has promised and what its employees have relied on, and what, therefore, the law will enforce, is **a pension program, the terms of which are protectable subject to reasonable legislative modification from time to time.**" 331 N.W.2d at 749.

Mississippi

Miss. Const. Ann. Art. 3, § 16 (2007)

§ 16. Ex post facto laws; impairment of contract

Ex post facto laws, or laws impairing the obligation of contracts, shall not be passed.

Missouri

Mo. Const. Art. I, § 13 (2007)

§ 13. Ex post facto laws--impairment of contracts--irrevocable privileges

That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be enacted.

FOP Lodge 2 v. City of St. Joseph, 8 S.W.3d 257 (Mo. Ct. App. 1999) (**no contractual rights**): Plaintiffs asserted error in allowing respondent pension board to reduce retirement benefits by changing benefits calculation and in granting respondent city summary judgment by ruling that

respondent city's ordinance did not cause the changes. The Court affirmed, holding there was no error in finding the statutory restriction against reducing pension benefits inapplicable to pension board. There was nothing in the ordinances or pension plan that created a vested right to continuance of a certain method of calculating pension amounts. Pension board properly exercised its discretion by adopting a new method of calculating pension amounts. The Court stated, “**The general rule is that a pension granted by public authorities is not a contractual obligation but is a gratuitous allowance, in the continuance of which the pensioner has no vested right, and that a pension is accordingly terminable at the will of the grantor, either in whole or in part.** And since there is no contract on the part of the state to continue the payment of a benefit or annuity, a change in the law affecting such benefit or annuity does not impair the obligation of a contract or deprive a pensioner of property within the constitutional meaning.” Id. at 264 (internal citation omitted).

Montana

Mont. Const., Art. II § 31 (2005)

31 Ex post facto, obligation of contracts, and irrevocable privileges.

No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

State ex rel. Sullivan v. Teachers' Retirement Bd., 174 Mont. 482, 485, 571 P.2d 793 (1977) **(contractual rights created)**: Montana Supreme Court held a teacher had the right to purchase credit toward retirement benefits in the Teacher's Retirement System for his out-of-state teaching service. The court state, “In Montana, retirement benefits in the teachers' retirement system are a matter of contract right. The terms of the teachers' retirement benefit contract in Montana are determined by the controlling provisions of the teachers' retirement system statute in effect at the time the teacher becomes a member of the Montana Teachers' Retirement System. These sections of the statute become part of the teacher's contract.”

Nebraska

Ne. Const. Art. I, § 16 (2007)

§ 16. Bill of attainder; retroactive laws; contracts; special privileges

No bill of attainder, ex post facto law, or law impairing the obligation of contracts, or making any irrevocable grant of special privileges or immunities shall be passed.

Halpin v. Nebraska State Patrolmen's Retirement System, 211 Neb. 892, 320 N.W.2d 910 (1982) **(contractual rights impaired)**: The Supreme Court of Nebraska holds that public employee pension rights were contractual in nature. The State changed the final average monthly salary computation for retirement purposes by excluding payment received for unused vacation and sick leave from the computation. In determining that pension rights were contractual in nature, the Court acknowledged that not every modification of a contract impairs the obligation of contract under federal constitutional law. It was then determined that the change had diminished

the benefits that had been applied "without an offsetting increase in benefits." *Id.* at 914. The Court stated that impairments are not necessarily unconstitutional and "may yet pass constitutional muster if they are 'both reasonable and necessary'" to serve an important public purpose.

Nevada

Nev. Const. Art. 1, § 15 (2007)

15. Bill of attainder; ex post facto law; obligation of contract.

No bill of attainder, ex-post-facto law, or law impairing the obligation of contracts shall ever be passed.

Nicholas v. State of Nevada, 116 Nev. 40, 992 P.2d 262 (Nev. 2002): **(contractual rights impaired)**: Appellants, former members of the Nevada Legislature, sued appellees, Public Employees Retirement Board and its members, for reducing their retirement benefits. The legislature, after appellants were no longer members of the legislature, passed a pension bill which, after appellants began collecting pensions under the bill, was repealed. Following that repeal was when appellees reduced appellants' pensions. Appellants claimed the legislature could not alter retirement benefits after such benefits were being paid without violating the Contracts Clause of the U.S. Const. art. I, § 10 and Nev. Const. art. 1, § 15. The court held that since appellants' pension benefits absolutely vested during the short window of opportunity when the law was valid, removing those benefits would undermine the validity of contractual benefits for all public employees. The court stated an employee's rights become absolutely vested when he retires and all conditions for his retirement benefits have been met. That right is constitutionally protected against impairment once absolutely vested. When retirement benefits become vested, a contract exists between the employee and the state which cannot be modified by unilateral action on the part of the legislature.

New Hampshire

N.H. Const. Pt. FIRST, Art. 23. (2007)

Art. 23. [Retrospective Laws Prohibited.]

Retrospective laws are highly injurious, oppressive, and unjust. No such laws, therefore, should be made, either for the decision of civil causes, or the punishment of offenses.

Opinion of Justices, 135 N.H. 625 (N.H. 1992) **(contractual rights impaired)**: The New Hampshire House of Representatives passed a resolution requesting that the court give its opinion on certain questions of law regarding the constitutionality of a pending bill relative to a furlough program for state employees, which would have required all state employees whose salary was greater than \$15,000 to take unpaid days of leave, thus relieving some of the pressure on the state budget. The court found that the bill was unconstitutional because it violated the Contract Clauses in both U.S. Const. art. 1, § 10 and N.H. Const. pt. 1, art. 23 by substantially impairing the terms of the collective bargaining agreement (CBA) then in effect. The CBA plainly guaranteed a work week of a certain length, with allowances made only for holidays and

paid leave for the term of the contract. Forcing workers to take unpaid leave thus violated the contract. In addition, as the power to furlough state officials was the power to remove them from their positions piecemeal, the court found that the bill violated N.H. Rev. Stat. Ann. § 4:1 and thus substantially impaired the officials' vested rights that were equivalent to contractual obligations owed by the state. Consequently, the bill impaired the officials' contractual rights, just as it impaired the CBA, which in turn violated the Contract Clauses of both the federal and state constitutions.

New Jersey

N.J. Const., Art. IV, Sec. VII, Para. 3 (2007)

Paragraph 3. Bills of attainder; ex post facto laws; impairment of contracts

3. The Legislature shall not pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made.

N.J. Stat. § 43:13-22.33 (2007)

§ 43:13-22.33. Transfer of membership from existing funds

Upon the adoption of this act, the transfer of membership from any of the existing funds organized under the provisions of article 2, chapter 13, Title 43 of the Revised Statutes; and of chapter 18, Title 43 of the Revised Statutes; and of chapter 19, Title 43 of the Revised Statutes to the retirement system created hereby shall result in a contractual relationship with the city, and or the benefits provided for under the aforesaid statutes shall not be diminished or impaired; provided, however, that nothing in this section contained shall affect the rates of contributions and the provisions governing refund of contribution hereinbefore set forth for members and pensioners of the retirement system created hereby, including those members of the aforesaid pension funds who are transferred to the retirement system created hereby.

Spina v. Consolidated Police & Fireman's Pension Fund Comm'n, 41 N.J. 391, 197 A.2d 169 (N.J. 1964) (**no contractual rights created**): Plaintiffs, police officers and firefighters, sued after the legislature increased the age at which a police officer or firefighter could retire and receive benefits, as well as the minimum number of years of service required to receive such benefits. Plaintiffs contended that the legislature's action constituted a violation of a contract, or, alternatively, a taking of their property rights without due process of law. In rejecting these arguments, the court held that the state legislature had not intended to create a contractual right to pension benefits, nor was there a due process right to such benefits. Although they were deferred compensation, the necessity of preventing insolvency in the pension fund justified the modifications in eligibility made by the legislature. The court declined to find contractual rights because the retirement fund, to be a contract, must guarantee the solvency of the fund so that "the expectations of all of the rank-and-file members" are met. **The recognition of the legislature's potential need to unilaterally intervene to preserve the actuarial soundness of the retirement fund precludes implying a contractual obligation.** "It seems odd to say the State may unilaterally rewrite its own contract. . . . We think it more accurate to acknowledge the inadequacy of the contractual concept." 41 N.J. at 404.

Gauer v. Essex County Div. of Welfare, 108 N.J. 140, 528 A.2d 1 (N.J. 1987) (**health benefits cannot be rescinded**): In assessing plaintiff retiree's right to continue receiving reimbursement of health insurance and Medicare Part B premiums from defendant county as part of plaintiff's retirement benefits, the court examined whether any group of county employees was uniquely situated so that particularized treatment was accorded without violating the uniformity standard of N.J. Stat. Ann. § 40A:10-23. The court held that it was not justified to rescind benefits to former employees who had been hired or retired by the predecessor agency under different employment conditions. The court asserted that the issue was not whether the employer was the same, although a successor in form, but whether successive employees were similarly situated. The court held that pension benefits could not have been rescinded unilaterally based on the erroneous belief that benefits had to be discontinued. The court stated, "We are persuaded that the reimbursement of health insurance premiums to long-standing employees was intended at least in part as compensation for extended tenure. Hence we are satisfied that, like pensions, these retirement benefits were sufficiently compensatory to afford the plaintiff some interest in their preservation. 108 N.J. at 149-150 (internal citations omitted). "While it has been held, moreover, that **pension benefits** can be modified in the interest of assuring the integrity of the pension system despite the compensatory aspect of their nature, it seems clear that they **cannot be rescinded unilaterally when the underlying motivation is not preservation of the integrity of the benefit system** but the erroneous belief that the benefits must be discontinued." Id. at 150.

New Mexico

N.M. Const. art. II, § 19 (2007)

Section 19. [Retroactive laws; bills of attainder; impairment of contracts.]

No ex post facto law, bill of attainder nor law impairing the obligation of contracts shall be enacted by the legislature.

Pierce v. State of New Mexico, 121 N.M. 212, 910 P.2d 288 (N.M. 1995) (**no contractual rights created**): Retirees filed a class action lawsuit on behalf of retirees who received a pension prior to January 1, 1990 under the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act, and the Educational Retirement Act. The court rejected the retirees' claim, holding retirement programs did not grant retirees private contractual rights; thus, no right to the repealed tax exemptions and no impairment of contract under either the New Mexico or Federal Constitution existed. The court found the state retirement plans granted employees a substantive right to receive retirement benefits upon meeting certain requirements, but held the statutory retirement plans did not create contractual rights. Statutes create vested property rights after employee earns five years of service credits. Court finds no vested right to receive retirement benefits free from taxation.

New York

NY CLS Const Art V, § 7 (2007)

§ 7. [Membership in retirement systems; benefits not to be diminished nor impaired]

After July first, nineteen hundred forty, membership in any pension or retirement system of the state or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired.

McDermott v. Regan, 624 N.E.2d 985 (N.Y. App. 1993) (**reduction in employer contributions impaired contractual rights**): A newly enacted statute changed the funding method for several government pension funds. *Id.* at 986. The fund at issue had been accumulated through an aggregate cost method which resulted in funding some benefits before they actually accrued. *Id.* at 987. The new legislation, on the other hand, adopted a projected unit credit method which required that benefits need only be funded once they were “accrued.” *Id.* The result of this change would be that “contributions that have [already] been put into the [fund] exceed benefits actually accrued and become so-called surplus which [was] returned to the governmental entity making the annual contribution.” *Id.* This allowed governmental entities to pay reduced contributions for a number of years as a way of dealing with a state budget crisis. *Id.* The New York court concluded that the legislation allowing the reduction in employer contributions violated the state constitution because it impaired the security of the pension fund and divested the funds’ trustee of discretion in choosing the appropriate funding methods.

Lippman v. Board of Education, 66 N.Y.2d 313, 487 N.E.2d 897 (N.Y. 1985) (**no contractual right to health insurance benefits**): New York Court of Appeals holds that health insurance benefits are not within the protection of article V, section 7 of the State Constitution. Thus, a resolution of the Board of Education, which reduced the school district’s contribution from 100% to 50% of the health insurance premiums for its retired employees and from 50% to 35% of the premiums for dependents of retirees, does not violate the constitutional provision. The Court stated, “the only relation between health benefits and retirement benefits is the purely incidental one that the latter provides the means by which the former is paid in those instances where the employer has elected to pay less than the full premium. The result of a reduction in the proportion of the health insurance premium paid by the school district is that a retiree will receive a smaller retirement check, but this is no more a change in retirement benefits than would be an increase in the price of eggs at the supermarket or in a retiree’s apartment rent. The retiree has less to spend, but there has been no change in his *retirement benefit*.” (emphasis in original).

North Carolina

N.C. Const. art. V, Sec. 6 (2007)

Sec. 6. Inviolability of sinking funds and retirement funds

(2) Retirement funds. Neither the general assembly nor any public officer, employee, or agency shall use or authorize to be used any part of the funds of the Teachers’ and State Employees’ Retirement System or the Local Governmental Employees’ Retirement System for any purpose other than retirement system benefits and purposes, administrative expenses, and refunds; except

that retirement system funds may be invested as authorized by law, subject to the investment limitation that the funds of the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System shall not be applied, diverted, loaned to, or used by the State, any State agency, State officer, public officer, or public employee.

Andrews v. State of North Carolina, 348 N.C. 130, 500 S.E.2d 54 (N.C. 1998) (**contractual rights impaired**): Court holds legislation that partially taxed state and local government retirement benefits was unconstitutional as an improper impairment of contract and a taking of property without just compensation. Court stated that the relationship between the public employee retirement system and plaintiff state and local government employees whose retirement benefits vested was contractual in nature, that the right to benefits exempt from state taxation was a term of such contract, and that such exemption did not constitute an unconstitutional contracting away of the state's taxation power.

North Dakota

Article I DECLARATION OF RIGHTS

N.D. Const. Art. I, § 18 (2007)

Section 18. [Bill of attainder - Ex post facto laws - Impairment of contract obligations]

No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.

N.D. Const. Art. I, § 20 (2007)

Section 20. [Rights retained]

To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

Ohio

Ohio Const. Art. II, § 28 (2007)

§ 28. Retroactive laws

The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state.

State ex rel. Horvath v. State Teachers Retirement Board, 83 Ohio St. 3d 67, 1998 Ohio 424, 697 N.E.2d 644 (1998) (**no impairment of contractual rights or taking of property**): Husband of employee initiated action against retirement board of employer and contended that he was

entitled to recover interest on mandatory contributions to retirement plan made by his wife during her employment. The court held that the takings clauses, U.S. Const. amend. V and Ohio Const. art. I, § 19, were designed to bar the government from wrongfully taking property. The court held that the statute governing the retirement plan was not a taking or a physical invasion by the government but rather a regulation on the plan. The court held that property interests were not created by the constitution but were defined by existing rules of state law. Court stated, “we are unable to conclude that our legislature intended to confer contractual rights upon [retirement system] participants aside from those that have vested by operation of statute.” 83 Ohio St. 3d at 78.

Oklahoma

Okl. Const. Art. II, § 15 (2007)

§ 15. Bills of attainder--Ex post facto laws--Obligation of contracts--Forfeitures

No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts, shall ever be passed. No conviction shall work a corruption of blood or forfeiture of estate: Provided, that this provision shall not prohibit the imposition of pecuniary penalties.

Taylor v. State, 1995 OK 51, 897 P.2d 275 (Okla. 1995) (**no impairment of contractual rights**): School district employees objected to transfer of pension funds. The Oklahoma Supreme Court held that the transfer satisfied constitutional requirements. A statute that transferred public moneys from one legislatively created fund to another had nothing to do with equality and uniformity of payments from public funds according to duration of service and remuneration. The fund created by the transfer was neither given away nor spent. Moreover, even though the retirement funds were trust funds that established contractually based pension rights in the beneficiaries, the legislature was permitted to modify such arrangements provided that the modifications were reasonable, necessary and that the disadvantages of modification were offset by advantages created. Furthermore, the law satisfied the requirement that the actuarial soundness of the fund was not impaired nor were vested rights detrimentally affected.

Court stated the following rule: “**modifications, in addition to being necessary, reasonable, and providing offsetting advantages to any disadvantages, will be approved only if they do not impair the actuarial soundness of the fund, or detrimentally affect vested rights, which are matters of proof.**” 897 P.2d at 279. Although the rule was satisfied under the facts of this case, the Court stated, “we would not hesitate to find that its terms had been violated in a situation where the actuarial soundness of the fund were threatened, and contract rights of retired public employees and those eligible for retirement, were unreasonably impaired.” Id. at 280.

Oregon

Ore. Const. Art. I, § 21 (2005)

Section 21. Ex-post facto laws; laws impairing contracts; laws depending on authorization in order to take effect; laws submitted to electors.

No ex-post facto law, or law impairing the obligation of contracts shall ever be passed, nor shall any law be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution; provided, that laws locating the Capitol of the State, locating County Seats, and submitting town, and corporate acts, and other local, and Special laws may take effect, or not, upon a vote of the electors interested.

Hughes v. Oregon, 314 Ore. 1, 838 P.2d 1018 (Or. 1992) (**contractual rights impaired**): Present and retired public employees sought declaration of the constitutionality of the state's subjecting previously exempt public employees' retirement benefits to income tax under 1991 Or. Laws ch. 823, §§ 1 and 3. The court found 1991 Or. Laws, ch. 823, § 1 was unconstitutional to the extent it affected retirement benefits accrued or accruing for work performed on or before its effective date, explaining the statute impaired a contractual obligation in violation of the state contracts clause, Or. Const. art. I, § 21. The court explained the language contained in former Or. Rev. Stat. § 237.201 (1989) was promissory and in the context of its enactment revealed an intent to create a contract exempting public employees' retirement benefits from state and local taxation when such benefits were accrued prior to the amendment effective date. The court sustained the constitutionality of 1991 Or. Laws ch. 823, § 3 because it did not violate the contracts clause when it breached, rather than impaired public employees' contract insofar as it subjected accrued benefits to taxation. The court noted breach of contract differs from impairment of contractual obligation.

Oregon State Police Officers' Ass'n v. State, 918 P.2d 765 (Or. 1996) (**contractual rights impaired**): Oregon Supreme Court holds that constitutional amendments that altered the public employees' retirement system contract with the state violated the federal Contracts Clause and were void. The court held that contractual relations between an annuitant and an employer were created when an annuitant made a contribution to a pension fund, and upon full performance, rights accrued which could not be impaired by subsequent legislation. An employee who accepted an initial retirement plan offer had vested contract rights which could not be altered by a second plan put into effect after the initial plan.

Pennsylvania

Pa. Const. Art. 1, § 17 (2006)

§ 17. Ex post facto laws; impairment of contracts

No ex post facto law, nor any law impairing the obligation of contracts, or making irrevocable any grant of special privileges or immunities, shall be passed.

Dombrowski v. City of Philadelphia, 245 A.2d 238 (Pa. 1968) (**contractual rights impaired**): The case involved an express requirement imposed upon Philadelphia under its Home Rule

Charter to maintain the city's pension system in an actuarially sound condition. The court held the Contract Clause compelled compliance with the requirement contained in the charter. The court initially noted the absence of legislative alteration; the city had simply not followed its charter. The condition of Philadelphia's pension system was not theoretical. Actuarial unsoundness had been factually established. The court noted that the impairment claim was based on a present failure to fulfill the charter's promise. The fact that a remedy would exist in the future when benefits became due but could not be paid because of past under-funding was unacceptable to the court.

Larsen v. Pennsylvania, 955 F. Supp. 1549, 1577 (M.D. Pa. 1997) (**medical benefits protected by contracts clause**): The district court stated it was “well-settled” under Pennsylvania law “that where a public employee’s right to receive benefits has vested, any attempt to later interfere with that right constitutes an unconstitutional impairment of contract.” The court held, based on its prediction of how the Pennsylvania Supreme Court would rule on the issue, that “under the appropriate circumstances medical benefits may be a form of deferred compensation” protected by the contracts clause of the federal constitution. 955 F. Supp. at 1579.

Puerto Rico

L.P.R.A. Const. Art. II, § 7 (2004)

§ 7. Right to life, liberty, and enjoyment of property; no death penalty; due process; equal protection of laws; impairment of contracts; exemption of property from attachment

The right to life, liberty and the enjoyment of property is recognized as a fundamental right of man. The death penalty shall not exist. No person shall be deprived of his liberty or property without due process of law. No person in Puerto Rico shall be denied the equal protection of the laws. No laws impairing the obligation of contracts shall be enacted. A minimum amount of property and possessions shall be exempt from attachment as provided by law.

Rhode Island

R.I. Const. Art. I, § 12 (2007)

§ 12. Ex post facto laws -- Laws impairing obligation of contract

No ex post facto law, or law impairing the obligation of contracts, shall be passed.

In re Almeida, 611 A.2d 1375, 1384 (R.I. 1992) (**no impairment of contractual rights**): Rhode Island Supreme Court rejected the petition of Almeida, a retired judge. The Commission on Judicial Tenure and Discipline found Almeida guilty of illegal and unethical conduct and recommended that he be removed from office and that his pension benefits be terminated retroactively to the date of his retirement. Almeida argued that termination of his statutorily awarded pension was beyond the power of the Court. The Court disagreed. In terminating Almeida's pension benefits, the Court noted that honorable and faithful service to the state was essentially a condition precedent to any state employee receiving a pension. Since Almeida had failed to serve honorably, he was disqualified from receiving a pension, even though he had otherwise satisfied the statutory requirements for his pension rights to vest. The Court stated that

pensions are not gratuities of the state. Rather, the Court noted that "we conclude that a pension comprises elements of both the deferred compensation and contract theories." *Id.* at 1386.

South Carolina

S.C. Const. Ann. Art. I, § 4 (2006)

§ 4. Attainder; ex post facto laws; impairment of contracts; titles; effect of conviction.

No bill of attainder, ex post facto law, law impairing the obligation of contracts, nor law granting any title of nobility or hereditary emolument, shall be passed, and no conviction shall work corruption of blood or forfeiture of estate.

South Dakota

S.D. Const. Article VI, § 12 (2007)

§ 12.

No ex post facto law, or law impairing the obligation of contracts or making any irrevocable grant of privilege, franchise or immunity, shall be passed.

Tait v. Freeman, 74 S.D. 620, 57 N.W.2d 520 (1953) (**no contractual rights created**): South Dakota Supreme Court rejects the contention that a right to a continuing pension system exists where the employee has fulfilled the service requirement but has not reached retirement age. Court holds that, where Teachers' Retirement System fund consisted of contributions from members and legislative appropriations, and any member after thirty years teaching and upon attaining age sixty was entitled to receive annuity and pension, members who had contributed for thirty years but who had not reached age sixty had no vested rights in pension fund but had mere inchoate rights subject to cancellation at will of legislature.

Tennessee

Tenn. Const. Art. I, § 20 (2007)

Sec. 20. No retrospective laws.

That no retrospective law, or law impairing the obligations of contracts, shall be made.

Miles v. Tennessee Consolidated Retirement Sys., 548 S.W.2d 299 (Tenn. 1977) (**contractual rights impaired**): Court found that retired judges had entered into a contract with the state that was fully performed at the time the judges retired. The court held that, because the statute reduced the benefit base for calculating the pensions, the statute impaired the retired judges' contract with the state. The court held that to the extent that the statute reduced the benefit base for the judges who were currently in office, the statute was unconstitutional.

Davis v. Wilson County, 70 S.W.3d 724 (Tenn. 2002) (**no vested right to health care benefits**): Two county resolutions extended health care benefits to the county employees including retired

employees who met certain requirements but contained no clear and express language stating that the health care benefits were intended to vest or could never be amended or terminated. The initial 1992 resolution stated that the terms could be altered at any time. The Tennessee Supreme Court found that: (1) the health care benefits were welfare benefits that did not vest automatically, (2) there was no clear and express language in the resolutions stating that the benefits were intended to vest or could not be terminated, and (3) reserving the right to modify or terminate benefits was plainly inconsistent with any alleged intent to vest those benefits.

Texas

Tex. Const. Art. I, § 16 (2007)

§ 16. Bills of Attainder; Ex Post Facto or Retroactive Laws; Impairing Obligation of Contracts

No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.

Cook v. Employees Retirement System, 514 S.W.2d 329 (Tex. Ct. App. 1974) **(no contractual rights created)**: The minor children of appellant were awarded survivor's benefits until the age of 21 upon the death of their father and appellant's spouse, a firefighter. The trial court then held that the children were no longer entitled to benefits beyond the age of 18 due to the subsequent enactment of Tex. Rev. Civ. Stat. Ann. art. 5923b, which changed the definition of a "minor" from one being under the age of 21 to one being under 18. Appellant argued the trial court erroneously applied art. 5923b to retroactively take away the children's benefits to which the children had a vested right, in violation of Tex. Const. art I, § 16. On appeal, the court held that the children acquired no vested right in the financial assistance funds, but only acquired the right to participate in the fund subject to the continuing control of the legislature. As such, the legislature effectively changed the age at which the benefits would terminate for those receiving financial assistance, and application of such change to appellant's children was not unconstitutional. The court stated, "We reaffirm the established rule that **all pension funds, financial assistance funds, annuities and such other benefits created by the Texas Legislature** for the benefit of employees and other personnel of this State and the political subdivisions thereof as designated by statute or otherwise by law **shall be subordinate to the right of the Legislature to abolish the system, diminish the accrued benefits, increase the benefits, change the eligibility for benefits or to otherwise alter or modify the method of payment of the benefits of any or all such funds.**" Id. at 331.

Utah

Utah Const. Art. I, § 18 (2007)

§ 18. [Attainder -- Ex post facto laws -- Impairing contracts.]

No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be passed.

Ellis v. Utah State Retirement Board, 757 P.2d 882 (Utah App. 1988) **(no impairment of contractual rights)**: Court affirms applicant's denial of disability benefits, holding applicant

was not deprived of vested contractual benefits when he failed to satisfy the conditions precedent to his disability retirement benefits. Court holds: When a retired employee had made the requisite contributions and had satisfied all conditions precedent to his benefits, then the employee had a "vested right" in his retirement benefits as provided by the statute at the time of his retirement and a subsequent amendment could not reduce the amount of benefits to which the employee was entitled. The employee has this vested contractual right only when he has satisfied all conditions precedent to receiving the benefit, i.e., he has attained retirement age, or has been medically disabled.

Virgin Islands

V.I.C. Rev. Org. Act of 1954 § 3 (2006)

§ 3. [Rights and prohibitions]

No law impairing the obligation of contracts shall be enacted.

Vermont

Burlington Fire Fighters' Ass'n v. Burlington, 149 Vt. 293, 297 (Vt. 1988) **(no impairment of contractual rights)**: Court holds that "where an employee makes mandatory contributions to a pension plan, that pension plan becomes part of the employment contract as a form of deferred compensation, the right to which is vested upon the employee's making a contribution to the pension plan." The municipality's retirement board began a substantial revision of a retirement ordinance. The revised ordinance provided increased benefits, required greater employee contributions. The court held that an employee's vested pension rights may be modified prior to retirement if such modifications are reasonable, since it allows the pension system to adapt to changing conditions. The court found that the **amendments to the pension plan were reasonable because they bore a close relationship to the continued success of the pension system to meet the changing needs of municipal employees.**

Virginia

Va. Const. Art. I, § 11 (2007)

§ 11. Due process of law; obligation of contracts; taking of private property; prohibited discrimination; jury trial in civil cases

That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts, nor any law whereby private property shall be taken or damaged for public uses, without just compensation, the term "public uses" to be defined by the General Assembly; and that the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged, except that the mere separation of the sexes shall not be considered discrimination.

Pitts v. City of Richmond, 235 Va. 16, 366 S.E.2d 56 (Va. 1988) **(no impairment of contractual rights)**: The court held firefighters did not have vested rights in disability retirement benefits.

Neither firefighter satisfied the event requirement to acceptance of the retirement system's promise to pay because neither firefighter had actually retired for service after having reached either early retirement age or normal retirement age. The court further held that the firefighters' rights were governed by the ordinance that was in effect at the time they qualified for disability retirement. Neither firefighter met the conditions for acceptance of the joint and last survivor benefits package or the widow's retirement allowance. Court stated, "Prior to acceptance by full performance, an employee has no vested rights in the System, and the City is free to modify its provisions." 235 Va. at 20.

Washington

Wash. Const. Art. I, § 23 (2007)

§ 23. Bill of attainder, ex post facto law, etc

No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.

Weaver v. Evans, 495 P.2d 639 (Wash. 1972) (**contractual rights impaired**): The court held that one of the "vested contractual pension rights" included the systematic funding of a pension system to maintain actuarial soundness. The case involved an attempt by Washington's governor to redirect moneys from the state's Teachers' Retirement System to the general revenue fund. The effect of the governor's action was two-fold: It required the withdrawal of funds from pension reserves to pay current pension obligations, and it precluded credit for pension reserves for the remainder of the biennium. The court observed that in creating the pension system, the state's legislature had expressed a concern with maintaining actuarial soundness, and the legislature had adopted a systematic method of funding for that purpose. The contractual rights of the participants and beneficiaries therefore could not be modified unilaterally "except for the purpose of keeping the retirement system flexible and maintaining its integrity." Such modification, the court stated, "in turn must be reasonable and bear some material relation to the theory of a pension system and its successful operation, else the vested contractual right [would become] unconstitutionally impaired."

West Virginia

W. Va. Const. Art. III, § 4 (2007)

§ 4. Writ of Habeas Corpus

The privilege of the writ of habeas corpus shall not be suspended. No person shall be held to answer for treason, felony or other crime, not cognizable by a justice, unless on presentment or indictment of a grand jury. No bill of attainder, ex post facto law, or law impairing the obligation of a contract, shall be passed.

Dadisman v. Moore, 384 S.E.2d 816 (W. Va. 1989) (**contractual rights impaired**): The West Virginia Supreme Court of Appeals held that borrowing and under-funding were contract impairments which violated the contract clauses of the federal and West Virginia constitutions. The state failed to comply with statutory requirements to fund the West Virginia Public

Employees Retirement System. Pension system trustees were obligated to certify to the state's governor an amount of funds necessary to match employee contributions for earned service. The governor would then include the amount in the budget submitted to the legislature. The court found the actions taken with respect to the system to be a contract impairment. The court determined that the governor's and the legislature's actions worked a "substantial ... impairment of the State's contract with public employees and retirants." The court rejected the argument that the impairment might be considered merely "technical" or "minimal." The court concluded that "even where a unilateral reduction in the state's share of pension contributions, as earned by State employees, [did] not result in out-of-pocket losses for plan participants, they still [had] a vested interest in the integrity and security of the funds available to pay future benefits."

Adams v. Ireland, 207 W. Va. 1, 528 S.E.2d 197 (W. Va. 1999) (**change in method of calculating pension benefits may impair contractual rights if detrimental reliance has occurred**): While appellant was a state employee, a statute was amended to change the method of calculation of pension benefits. The change reduced the amount of benefits appellant would have received. Appellant contended that he had been deprived of his contractual rights. The lower court dismissed the complaint. The court reversed, holding that a change in the method of calculating public employee pension benefits may unconstitutionally impair contractual rights if detrimental reliance has occurred, and that the complaint had been filed within the applicable statute of limitations for contract actions. The court stated, "'Detrimentially alter' means the legislature cannot reduce the existing benefits (including such things as medical coverage) of the pension plan or raise the contribution level without giving the employee sufficient money to pay the higher contribution. Should the legislature seek to reduce certain advantages of a pension plan, it must offer equal benefits in their place as just compensation." 207 W. Va. at 7.

Wisconsin

Wis. Const. Art. I, § 12 (2006)

Section 12. Attainder; ex post facto; contracts.

No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts, shall ever be passed, and no conviction shall work corruption of blood or forfeiture of estate.

Association of State Prosecutors ex rel. Feiss v. Milwaukee County, 199 Wis. 2d 549 (Wis. 1996) (**transfer of retirement funds was taking of property**): Wisconsin Supreme Court held that transfer of funds from County Plan to State Plan took property without due process of law. The court reasoned that vested employees and retirees had protectable property interests in their retirement trust funds which the legislature could not simply confiscate under the circumstances. Although the court conceded that legislative modifications were necessary in certain limited situations, the court found no such necessity in the instant case because the County Plan was neither insolvent nor in fiscal distress. 199 Wis.2d at 564. Court states, "**the legislature should retain a limited power to adjust or amend a retirement plan in certain situations, such as when it is necessary to preserve the actuarial soundness of a plan or to salvage financially troubled funds.**" Id. at 563.

Wyoming

Wyo. Const. Art. 1, § 35 (2007)

§ 35. Ex post facto laws; impairing obligation of contracts.

No ex post facto law, nor any law impairing the obligation of contracts, shall ever be made.